

FILED

April 21, 2005

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

JEBAMONI AMBROSE, M.D.

SUPPLEMENTAL ORDER
ASSESSING COSTS

On September 29, 2004, we entered a Final Decision and Order In the matter of Jebamoni Ambrose, M.D., pursuant to which respondent Jebamoni Ambrose, M.D. was found to have violated the Duty to Cooperate regulations, N.J.A.C. 13:45C-1.2 and N.J.A.C. 13:45C-1.3(a)(5), by having failed to answer any questions or to participate in any manner at a lawful inquiry concerning his medical practice. Dr. Ambrose was reprimanded for having violated the Duty to Cooperate regulations, assessed a civil penalty in the amount of \$10,000 and ordered to pay costs incurred in the pursuit of this matter, to include attorneys' fees incurred by the Attorney General. See Final Decision and Order, In the Matter of Jebamoni Ambrose, M.D., filed September 29, 2004.

Respondent was additionally ordered to appear before a Committee of the Board on November 3, 2004 for an investigative inquiry concerning his general practice of medicine and concerning his care and treatment, record-keeping and prescribing for three patients. Dr. Ambrose did in fact appear before a Board Committee on said date and answered questions posed to him at that time; accordingly, the provisions of our prior Order which would have operated to suspend respondent's license (in the event he did not appear before the Committee or in the

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The Final Decision and Order did not fix the amount of costs to be assessed, but instead provided that the Attorney General was to submit a written certification detailing all costs incurred in this matter, whereupon respondent was to be afforded an opportunity to submit written objections to any item(s) sought as costs. On November 18, 2004, the Attorney General submitted a Certification of Daniel S. Goodman, Deputy Attorney General, wherein D.A.G. Goodman represented that he spent a total of 135 hours in the pursuit of the Ambrose matter between June 14, 2004 and September 8, 2004. The Attorney General sought a total of \$16,875.00 in attorneys' fees for said legal services, calculated at a rate of \$125.00 per hour for D.A.G. Goodman's legal work. The \$125.00 per hour rate was based on a schedule of hourly rates of compensation for legal staff in the Division of Law established by Jeffrey J. Miller, then Director of the Division of Law, on September 1, 1999, which established the uniform rate of compensation for Deputy Attorneys General with 5-10 years of legal experience at \$125.00/hour. Time sheets detailing the number of hours D.A.G. Goodman spent on this matter on various dates between June 14, 2004 and September 8, 2004 were appended to the certification.

event he continued to violate the Duty to Cooperate Regulations) were not triggered.

The Attorney General additionally submitted a Certification of William V. Roeder, Executive Director of the Board, dated November 18, 2004. Therein, Executive Director Roeder detailed that a total of \$368.30 was expended by the Board for court reporter services and transcripts, and that a total of \$176.40 in Enforcement Bureau costs were incurred to effect personal service of the filings in this case, for a total of \$544.70 in costs (non-attorneys' fees). The aggregate total of costs sought was thus \$17,419.70.

Respondent submitted a letter dated November 29, 2004, wherein he repeatedly questioned the individual time entries recorded by D.A.G. Goodman and asked generally to be provided with greater specificity and explanations regarding the legal services performed by D.A.G. Goodman. Respondent asked that the Board schedule a hearing on the propriety of the charges made or, in the alternative, reconsider the attorneys' fee assessment and waive said assessment based on Dr. Ambrose's cooperation at the November 3, 2004 inquiry. Respondent also argued that any attorneys' fee assessment would be inconsistent with New Jersey Court Rule R. 4:42-9. Respondent did not raise any objection to the \$544.70 in court reporter, transcript and service costs detailed in Executive Director Roeder's certification.

We initially considered the written submissions of the parties on December 8, 2004, but then tabled making any determination on the amount of attorneys' fees to assess against respondent in order to afford the Attorney General an opportunity to respond to the objections and questions raised in respondent's November 29, 2004 submission (we then noted that it did not appear that a copy of the objections had been served upon the Attorney General). We did then determine, however, that the transcript and court reporter costs, totaling \$386.30 and the Enforcement Bureau costs incurred by the Board to effect service upon respondent, totaling \$176.40, were to be assessed against respondent, as respondent had not raised any specific objection to those costs. We also then rejected respondent's request that the Board schedule a hearing in this matter, and/or reconsider its prior decision to assess costs in light of respondent's subsequent "cooperation with the Board", as respondent only "cooperated" with the Board after a Final Decision and Order was entered finding respondent to have violated the Duty to Cooperate regulations and after we had specifically ordered that further violations of the Duty to Cooperate regulations would have resulted in the suspension of respondent's license. Finally, we rejected respondent's claim that the Board was without legal authority to assess costs, to include

attorneys' fees, finding instead that cost assessments are specifically authorized by statute pursuant to N.J.S.A. 45:1-25(d).

The parties were advised of the determinations made by the Board in a December 14, 2004 letter. The Attorney General was directed to provide more detailed information concerning the fee application to the Board not later than December 28, 2004, and respondent was directed to submit any reply thereto not later than January 6, 2005, so that the matter could be reconsidered by the Board on the papers on January 12, 2005.

A supplemental submission was received from the Attorney General on December 27, 2004, wherein D.A.G. Goodman provided a more detailed description of the legal work which he performed in this case and outlined all of the many topics of legal research which he conducted. No reply was received from respondent.

We have scrutinized the submissions made in support of the Attorney General's attorneys' fee application, and are satisfied that cause exists to grant the application in its entirety. As noted above, N.J.S.A. 45:1-25(d) provides that a Board may order the payment of costs for the use of the State, including, but not limited to, costs of investigation, expert witness fees and costs, attorney fees and costs, and transcript costs. In this case, we have concluded that both the hours

expended on the case by the Attorney General and the hourly rate claimed for the legal services are reasonable, and we have further concluded that the substantial import of this matter justifies the imposition of all costs sought against respondent.

The Attorney General seeks compensation for 135 hours of legal services performed in a three month period in this matter. DAG Goodman details, in his response dated December 27, 2004, that the application for attorneys' fees is based upon and includes time spent preparing for the investigative hearing that was scheduled to have been conducted on June 16, 2004 (to include reviewing investigative materials, patient records and correspondence between respondent's counsel and the prior assigned Deputy Attorney General) and thereafter attending that hearing; researching and preparing legal responses to legal contentions raised by respondent's counsel prior to the investigative hearing; attending numerous inter-office conferences with Section Chief Paul Kenny, D.A.G. and Assistant Section Chief Jeri Warhaftig, D.A.G., to discuss how to proceed in this matter and related research; drafting minutes of Dr. Ambrose's appearance; researching and writing the Attorney General's Order to Show Cause, Verified Complaint, Brief and Certification of Counsel (which D.A.G. Goodman pointed out required many hours of legal research and writing);

reviewing Dr. Ambrose's Answer and Notice of Claim and researching the multitude of cases, regulations and statutes cited by respondent's counsel in those documents; preparing for a hearing before the Board; responding to respondent's adjournment requests (particularly his initial request which was predicated on the theory that the Attorney General's Verified Complaint constituted 'frivolous litigation'); preparing for the scheduled hearing before the Board; responding to an Order to Show Cause and Verified Complaint filed by Dr. Ambrose in Mercer County seeking to enjoin the Board's hearing in this matter (to include preparing a responsive letter brief and attending an appearance in Superior Court before Judge Patrick McManimon); and attending the hearing before the Board on September 8, 2004. We are satisfied that D.A.G. Goodman has provided adequate detail outlining the legal work which forms the predicate for the fee application, and we find the Attorney General's claim of 135 hours spent on legal services in this matter to be reasonable.'

We note that the Attorney General limits his fee application to fees generated by D.A.G. Goodman alone, notwithstanding that another Deputy Attorney General, Mary Kate Simmons, handled this file before D.A.G. Goodman became involved in the matter, and notwithstanding D.A.G. Goodman's representation in his correspondence of December 27, 2004 that other Deputy Attorneys General, to include D.As.G Kenny and Warhaftig, were consulted in inter-office conferences on this matter. We point out that the Attorney General would not have been precluded from seeking attorneys' fees for work performed by Deputy Attorneys General other than D.A.G. Goodman, however, as a matter of fundamental fairness, we limit our consideration and determination on the attorneys' fee application to

We are constrained to point out that a substantial number of the hours outlined above were spent by the Attorney General reviewing, researching and responding to the multitude of legal arguments, to include procedural, statutory and constitutional claims (all of which were ultimately found to be without merit) posited by respondent. Additional hours, and therefore additional expense, were entailed as a result of respondent's election to file an action in the Superior Court of New Jersey seeking to enjoin the Board's proceeding (which action was ultimately unsuccessful). It is thus the case that the size of the attorneys' fee application made herein is directly related to, if not a product of, respondent's actions in this case -- that is, his initial decision to attempt to stymie the Board's investigation of this matter by not cooperating or answering questions before a Committee of the Board, coupled with his subsequent legal decision to raise numerous meritless legal arguments and thereafter to attempt to enjoin the administrative proceedings in Superior Court.

Although respondent had been advised that he would be afforded an opportunity to submit a written response to the Attorney General's letter, no such reply was received. Respondent

those fees which the Attorney General has elected to seek, and we will not hereafter consider any supplemental application for additional attorneys' fees that may have been incurred in the pursuit of this matter.

thus arguably waived his right to make any further objections to the fee submission made by the Attorney General. Even in the absence of any response, however, we are satisfied that the number of hours expended in this matter by the Attorney General was reasonable.

Turning to the hourly rate, we note initially that respondent did not object (in his correspondence dated November 29, 2004) to the rate of \$125/hour that is being sought. Nonetheless, we point out that the rate sought appears to be modest and is seemingly well below our understanding of the rate prevailing in the community for similar work.

Finally, we point out that we consider it to be reasonable to assess all attorneys' fees sought to be recouped in this matter against respondent, particularly given the substantial import of the Board's interest in ensuring that licensees do not unreasonably refuse to cooperate in Board investigations. As we pointed out in the Final Decision and Order entered on September 29, 2004, we found respondent's conduct to have been obstructive and contumacious, and clearly designed to thwart and frustrate the ability of the Board to carry out its vital investigative functions. The Board, and more importantly the public we are entrusted to protect, has a vital interest in protecting the

integrity of the investigative process, and we find that interest to be far paramount to and to far outweigh any interest respondent may have in seeking to avoid any imposition of attorneys' fees in this case. We also take the position that the attorneys' fees that were incurred in this matter should be borne not by the entire licensee community (whose biennial licensure fees fund the Board's operations), but by the individual licensee who violated the Board's Duty to Cooperate Regulation. In conclusion, we are unanimously of the opinion that the attorneys' fee application in this case -- to include both the number of hours for which fees are sought and the cost per hour -- is reasonable, and that all attorneys' fees and other costs should be presently assessed against respondent.

WHEREFORE it is on this 14th day of April, 2005

ORDERED:

Respondent Jebamoni Ambrose is hereby assessed an aggregate total of \$17,419.70 in costs, to include \$16,875 in attorneys fees, \$368.30 in court reporter and transcript costs, and \$176.40 in service costs. All costs assessed herein shall be payable in full to the Board within ten days of the date of entry of this Order, or over a period of time not to exceed three years pursuant to such schedule of payments (to be made on a periodic

basis, in equal monthly or quarterly installments, and to include interest at a periodic rate of 1.0% per year) that respondent may propose to the Board and the Board may, in its discretion, determine to be acceptable.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By:



Bernard Robins, M.D.
Board President